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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

11 STATE OF WASHINGTON, et al.,

12 Plaintiffs,

13 v.

14 UNITED STATES DEPARTMENT
OF HOMELAND SECURITY, a
15 federal agency, et al.

16 Defendants.

NO. 4:19-cv-05210-RMP

DECLARATION OF PATRICK J.
CAREY IN SUPPORT OF
PLAINTIFF STATES' MOTION
FOR § 705 STAY PENDING
JUDICIAL REVIEW OR FOR
PRELIMINARY INJUNCTION

NOTED FOR: October 3, 2019
With Oral Argument at 10:00 a.m.

1 I, Patrick J. Carey, declare as follows:

2 1. I am over the age of 18, competent to testify as to the matters herein
3 and make this declaration based on my personal knowledge.

4 2. I submit this Declaration in support of the Commonwealth of
5 Virginia's litigation against the United States Department of Homeland Security
6 (DHS) regarding the recently issued rule entitled Inadmissibility on Public
7 Charge Grounds (Final Rule). I have compiled the information in the statements
8 set forth below either through personal knowledge, through the Virginia Housing
9 Development Authority (VHDA) personnel who have assisted me in gathering
10 this information, or on the basis of documents that I have reviewed. I have also
11 familiarized myself with the Final Rule in order to understand its immediate
12 impact upon VHDA.

13 3. I am the Chief of Program Strategy and Chief Financial Officer for
14 VHDA since February 2018. I joined VHDA in 1987 as Finance Manager and
15 served as Finance Director or Director of Finance from June 2003 to February
16 2013 and then as the Managing Director of Finance until February 2018. I am a
17 graduate of the University of Richmond and have a Master of Business
18 Administration degree from Virginia Commonwealth University. I possess over
19 30 years of experience in affordable housing policy and administration.

20 4. As Chief of Program Strategy and Chief Financial Officer, I work
21 directly with the Virginia Secretary of Commerce and Trade on high-level policy
22

1 and strategic issues. I am on the leadership team of VHDA, which includes four
2 offices, more than 400 staff members, and a wide range of programs and projects.
3 VHDA oversees a broad portfolio of services and works extensively with state,
4 local, tribal and community partners to improve the housing needs of all residents
5 of the Commonwealth of Virginia. VHDA is completely self-supporting and
6 receives no state appropriation (other than an initial advance, which VHDA has
7 repaid) or direct federal funding. The Commonwealth of Virginia has no legal
8 obligation for the debts (i.e. the notes and bonds) of VHDA.

9 5. The following is a description of VHDA, including the number of
10 residents it serves, demographics of residents served, and services provided to
11 residents that are relevant to the Final Rule.

12 VHDA was created in the Code of Virginia as political subdivision of the
13 Commonwealth of Virginia constituting a public instrumentality. It was
14 established in 1972 to assist in meeting the needs and achieving the objectives of
15 the Commonwealth with respect to housing for persons and households of low
16 and moderate income. The principal office of VHDA is located at 601 South
17 Belvidere Street, Richmond, Virginia 23220, telephone: (804) 782-1986.
18 VHDA's website address is www.vhda.com.
19
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21 The following is a summary of VHDA's primary programs.
22

1 A. Mortgage Lending Programs

2
3 VHDA was established to serve as a state mortgage finance agency.
4 VHDA has two primary mortgage lending programs, its rental housing (multi-
5 family) program and its homeownership (single-family) program.

6 (i) Rental Housing Loan Program. VHDA makes rental housing
7 mortgage loans in Virginia to provide construction and permanent financing for
8 multi-family housing developments. Such loans are financed from the proceeds
9 of taxable bonds, tax-exempt bonds and its own net assets. Such developments
10 are subject to the income limits and other regulatory requirements imposed by
11 VHDA and, if applicable, the rules and regulations associated with tax-exempt
12 bonds. VHDA is the allocating agency for the federal low-income housing tax
13 credit program (LIHTC) in Virginia. Many developments financed under
14 VHDA's rental housing loan program since 1987 are assisted under the LIHTC
15 program and are subject to the income limits imposed by the federal-low income
16 housing tax credit program. VHDA's enabling legislation authorizes VHDA to
17 finance mixed income developments, and in connection therewith commercial
18 space, subject to certain limitations. In addition, VHDA has financed and may
19 in the future finance developments that are assisted by HUD's Rental Assistance
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1 Demonstration Program (the RAD Program), the HUD 236 Program, the U. S.
2 Department of Agriculture's Section 515 program, the Section 8 Program and
3 HUD Risk Share Program. VHDA services all of the rental housing loans it
4 makes. As of June 30, 2019, there are approximately 1,165 rental housing
5 mortgage loans outstanding comprised of approximately 60,000 units in the
6 aggregate amount of approximately \$3.3 billion that VHDA owns and services.

8 (ii) Homeownership Loan Program. VHDA also provides mortgage
9 assistance to low- and moderate-income homebuyers. Under its current single
10 family program, VHDA purchases and makes single family mortgage loans in
11 Virginia from through the issuance of Government National Mortgage
12 Association (Ginnie Mae) securities or securitizing through Federal National
13 Mortgage Association (Fannie Mae) for financing and/or refinancing the
14 ownership or rehabilitation, or ownership and rehabilitation, of owner-occupied
15 single family residential housing, including condominium units, intended for
16 occupancy by persons and households of low and moderate income. In addition,
17 VHDA currently refinances certain single family mortgage loans. VHDA
18 services all of the single family loans it purchases and makes. Prior to the
19 implementation of the current homeownership program, VHDA made loans
20 financed from the proceeds of taxable bonds, tax-exempt bonds and its own net
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1 assets. VHDA also makes down payment assistance loans and grants and has a
2 mortgage credit certificate program. As of June 30, 2019, there are approximately
3 74,000 single-family mortgage loans outstanding in the aggregate amount of
4 approximately \$8.0 billion that VHDA either owns and services or services on
5 behalf of Ginnie Mae or Fannie Mae.
6

7 B. Federal Housing Rent Subsidy Programs.

8 VHDA also administers the following federal housing rent subsidy
9 programs in order to increase access to the housing units it finances for
10 households with limited incomes.
11

12 (i) Section 8 Housing Choice Voucher Program. VHDA has contracted
13 with the U. S. Department of Housing and Urban Development (HUD) to
14 administer the Housing Choice Voucher program on behalf of local governments
15 in Virginia not served by local public housing agencies. This program provides
16 tenant-based rental subsidies for very-low income persons and families.
17

18 To participate in the program, eligible households apply to VHDA's local
19 administrative agents. Once determined eligible, the household proceeds to
20 locate an existing rental dwelling unit that meets the applicable housing quality
21 standards. Once the household locates an acceptable unit, the administrative
22

1 agent conducts a unit inspection; VHDA executes a Housing Assistance
2 Payments Contract with the owner; the tenant and owner execute a Lease
3 Agreement; the household takes occupancy; and the rental assistance payments
4 are made directly to the owner. As long as the household remains in the program,
5 income and household size verifications are performed at least annually, and each
6 qualifying dwelling unit is likewise inspected at least annually.
7

8 VHDA's program is being implemented in partnership with 31 rural and
9 urban administrative agencies in the state, and 9,400 households are being
10 assisted with housing choice vouchers. Approximately \$74 million of Section 8
11 Housing Assistance Payments subsidies was disbursed under this program in
12 fiscal year 2018-2019. This represents 17% of the total HCVs in Virginia. The
13 balance is administered by local public housing agencies.
14

15
16 (ii) Section 8 Moderate Rehabilitation Housing Assistance Payments
17 Program. This program provides rental assistance to qualified families who
18 occupy dwelling units rehabilitated with VHDA financing. This program is
19 similar to the Section 8 Housing Choice Voucher Program described above,
20 except that the Housing Assistance Payments Contract has a term of fifteen years
21 and the subsidy is available only for the units which have been rehabilitated.
22

1 Upon completion of the rehabilitation work, VHDA entered into a 15-year
2 HAP Contract with the owner for the payment of rental subsidies based on HUD-
3 approved rent levels. During the term of the HAP Contract, VHDA or its
4 administrative agent adjusts rent levels and utility allowances, reviews tenant
5 eligibility, inspects units, and performs other administrative responsibilities of
6 contract administration.
7

8 VHDA is currently administering subsidy under this program for 40
9 housing units. Approximately \$171,609 of Section 8 Housing Assistance
10 Payments subsidies was disbursed under this program in fiscal year 2018-2019.
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12 (iii) Project-Based Section 8 Program. This program provides rental
13 subsidy to residents of newly constructed or substantially rehabilitated
14 developments financed by VHDA prior to the mid-1980s. Under this program
15 persons and families pay only 30% of their income as rent with the balance of the
16 rental payment provided through a housing assistance payment from the federal
17 government. In order to qualify, a person's income may generally not exceed
18 50% of the median income for the area as established by HUD. These Section 8
19 developments were subject to subsidy contracts with terms of 30 to 40 years co-
20 terminus with their original VHDA mortgage loan. Expiring subsidy contracts
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1 are being renewed on an annual basis and these housing developments are
2 expected to remain a significant source of housing for very low income persons
3 and families in the future.

4 VHDA is the contract administrator for 30 properties, totaling 2,111 units.
5 The estimated number of tenants occupying these units is 4,397. The annual
6 subsidy amount administered by VHDA is \$18,184,512.

7
8 6. I understand that DHS has issued a new regulation on the public
9 charge ground of inadmissibility under the Immigration and Nationality Act,
10 which I have reviewed. As I understand it, the Final Rule would allow the federal
11 government to expand its consideration of a person's past use of public benefits
12 and future need for public assistance in determining whether someone should be
13 eligible for lawful permanent residency, a new visa, or for an extension of stay
14 or change of stay from an existing visa. I understand that DHS would consider
15 use of one of several specific benefits for a duration of 12 months within a 36-
16 month period to be a heavily weighted negative factor in a public charge
17 determination. Most critically, these factors include programs crucial to resident
18 health and basic needs, such as Section 8 Housing Choice Vouchers and Section
19 8 Project Based Rental Assistance.
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1 7. As a result of that change, I believe the Final Rule will deter low-
2 income households containing both documented and undocumented immigrants
3 from seeking essential housing assistance for which they are eligible.

4 **Description of Relevant Program(s)**

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6 8. The following is an in-depth description of the programs and
7 services VHDA provides that are relevant to the Final Rule, including an
8 explanation as to how non-citizens are eligible for these programs, as well as how
9 many non-citizens there are, if that data is available.

10 The Final Rule impacts the following federal programs that VHDA
11 administers: Housing Choice Voucher Program and Section 8 Project Based
12 Rental Assistance program.

13
14 Under the Welfare Reform Act and the Housing Community Development
15 Act of 1980, lawful permanent residents and certain other qualified immigrants
16 are eligible for Section 8 programs.

17 Regarding the Housing Choice Voucher Program, the program currently
18 has 60 vouchers utilized/used by eligible non-citizen families. There are 6 non-
19 eligible, non-citizen members in those households. In those 60 households, there
20 are a total of 137 family members (6 of whom are the non-eligible, non-citizens).
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1 Corresponding information on the Section 8 Project Based Rental
2 Assistance program is not available at this time.

3
4 9. The Center on Budget and Policy Priorities (CBPP) regularly
5 collects data from HUD on federal rental assistance usage across the nation.
6 CBPP's most recent tabulation of data for the State of Virginia shows that as of
7 2018, approximately 106,000 Virginia households used federal rental assistance
8 in order to afford adequate shelter. Nationally, CBPP along with the National
9 Low-Income Housing Coalition and other organizations that monitor both
10 housing needs and rental subsidy usage, estimate that only 1 in 4 to 1 in 5 eligible
11 households are able to obtain rental assistance. VHDA's analysis of rental
12 housing needs in Virginia in 2013 was consistent with national estimates.
13 Therefore, it can be assumed that between 400,000 and 500,000 Virginia
14 households are currently eligible for federal rent subsidy assistance.

15 10. The Final Rule enumerates factors that will generally weigh heavily
16 in favor of a finding that an immigrant is likely at any time to become a public
17 charge. One such factor is that the immigrant has received, or has been certified
18 or approved to receive, one or more public benefits for more than 12 months in
19 the aggregate within any 36-month period, beginning no earlier than 36 months
20 before the immigrant applied for admission or adjustment of status on or
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1 after Oct. 15, 2019. Because the HCVs and Section 8 Project-Based Rental
2 Assistance are specifically defined as public benefits, this makes the individuals
3 participating in such programs that much more vulnerable to the Final Rule.
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5 **Harms to VHDA's Mission or Broader Harms**

6 11. The Final Rule will have a significant negative impact on the
7 VHDA's mission to ensure the housing needs of all Virginians.

8 These negative impacts include:

- 9 a. The Final Rule penalizes legally present immigrant families who
10 access federally funded programs, even briefly, and despite the
11 fact that they are legally eligible for such benefits;
- 12 b. The Final Rule is likely to have a disparate impact on immigrants
13 without wealth (including working families and families with
14 children) and immigrants of color;
- 15 c. The Final Rule may have a chilling effect on immigrant families
16 accessing any public benefits, even those not expressly included
17 in the Final Rule as "public benefits"; and
- 18 d. The Final Rule has a negative impact on immigrants' ability to
19 become upwardly mobile, impacting such programs as VHDA's
20 homeownership programs.

21 All of the foregoing are at odds with VHDA's mission of providing affordable
22 housing to Virginians.

Pecuniary or Direct Harms to VHDA and the Commonwealth of Virginia

12. The Final Rule will create tangible harm to VHDA. Specifically, VHDA relies on federal rent subsidy programs to bridge the gap between the rents that the very low-income households can afford to pay and the market rents achieved through the capital and mortgage subsidies provided by VHDA. Needed federal rent subsidy assistance is provided both through the Housing Choice Voucher and project-based Section 8 subsidies administered by VHDA, but also through the same subsidies administered by other public housing agencies in Virginia. Assuming that the households served by the VHDA-administered Housing Choice Voucher program are generally comparable to the overall population receiving federal rent subsidies through other public housing agencies, then at least 658 eligible non-citizen households comprising 1,500 family members could be assumed to be receiving federal rental assistance in Virginia in 2018. However, the numbers are likely much higher since VHDA administers the Housing Choice Voucher program mainly in suburban and rural areas of the state, while Virginia's foreign-born population is more heavily concentrated in the areas of Northern Virginia and Hampton Roads served by local public housing agencies.

The inability to provide legally present immigrant households with very low-incomes with federal rent subsidy assistance will pressure VHDA to allocate finite internally generated subsidy resources to provide deeper capital subsidies

1 to further lower base rents in the housing developments it finances. The same
2 pressure will be put on the Virginia Department of Housing and Community
3 Development to reallocate the finite state and federal capital subsidy funds it
4 administers for this purpose. However, most very low income households served
5 by the Housing Choice Voucher and Section 8 project-based rental assistance
6 programs, have incomes too low to fully cover just the operating costs of the units
7 they occupy. Therefore, capital subsidies alone cannot produce rents they can
8 afford. If legally present immigrant households lose access to rental assistance,
9 then they will be at high risk of housing instability and eviction or outright
10 homelessness. In either instance, the cost will be borne by VHDA and our partner
11 state agencies that are seeking to reduce these problems in Virginia.

12 Currently, VHDA is actively working in partnership with other state
13 agencies to address the high priority Virginia has put on: 1) reducing
14 homelessness; 2) reducing high rates of tenant eviction; and 3) providing
15 permanent supportive housing for vulnerable populations with serious mental
16 illness and developmental disabilities, as well individuals and families at risk of
17 homelessness. Virginia's focus is on providing affordable, permanent supportive
18 housing both because it best addresses the needs of individuals and families, and
19 because it is substantially less costly than the alternatives of: 1) providing state
20 and locally funded emergency services to homeless populations; 2) providing
21 institutional care to persons with mental illness or developmental disabilities; or
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1 3) having critical unmet shelter needs result in incarceration. In order to
2 successfully address these challenges, federal rental assistance is required to meet
3 household needs. The rental housing that VHDA is currently financing as part
4 of state plans to address these needs cannot be made affordable for either
5 homeless or unstably housed, at-risk households in the absence of households
6 being able to access federal rent subsidies. The Final Rule will pressure Virginia
7 to appropriate higher amounts of funding for state rental assistance in order to
8 off-set the inability to use federal rent subsidy funds to serve the needs of legally
9 present immigrant individuals and families in need of housing assistance.

10 **Harms to Individuals Served by Agency**

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12 13. As described above, very low-income individuals and households
13 unable to access federal rent subsidies, or deterred from requesting them, will be
14 at high risk of housing instability, eviction and homelessness. They will also be
15 unable to access the permanent supportive housing being developed by VHDA
16 and its state partner agencies to address their needs. There is substantial,
17 documented evidence that individuals and families that are homeless or unstably
18 housed suffer worse health outcomes than people able to reside in quality,
19 affordable housing. Likewise, children in families that are homeless or unstably
20 housed have difficulty in school and achieve weaker educational outcomes than
21 those living in quality housing that their families are able to afford. The long-
22

1 term social costs of poor health and education far outweigh the cost of providing
2 rental assistance. Reference is made to the following study conducted by Harvard
3 University's Raj Chetty: Chetty, Raj, Nathaniel Hendren, and Lawrence Katz.
4 2016. "The Effects of Exposure to Better Neighborhoods on Children: New
5 Evidence from the Moving to Opportunity Project." American Economic Review
6 106 (4).
7

8 **Administrative Challenges**

9 14. Implementation of the Final Rule is expected to create additional
10 administrative challenges for VHDA in the form of additional information
11 collection, reporting requirements and compliance monitoring responsibilities.
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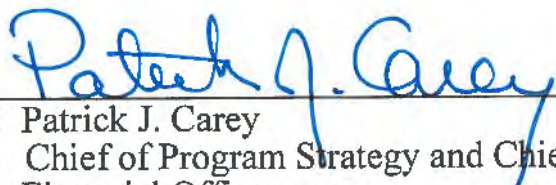
13 **[Signature appears on following page]**
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1 **SIGNATURE PAGE DECLARATION OF VIRGINIA HOUSING**
2 **DEVELOPMENT AUTHORITY IN SUPPORT OF PLAINTIFF STATES'**
3 **MOTION FOR PRELIMINARY INJUNCTION**
4

5 I declare under penalty of perjury under the laws of the Commonwealth of
6 Virginia and the United States that the foregoing is true and correct.

7 DATED this 27th day of August, 2019, at Richmond, Virginia.

8
9 VIRGINIA HOUSING DEVELOPMENT
10 AUTHORITY
(DECLARANT)

11
12 
13 By: Patrick J. Carey
14 Its: Chief of Program Strategy and Chief
15 Financial Officer
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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 6th day of September, 2019, at Tumwater, Washington.

/s/ Sara M. Cearley
SARA M. CEARLEY
Paralegal